

SERVED: March 12, 1992

NTSB Order No. EA-3514

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D. C.  
on the 28th day of February, 1992

BARRY LAMBERT HARRIS,  
Acting Administrator,  
Federal Aviation Administration,

Complainant,

v.

DOUGLAS RAY HILL,

Respondent.

Docket SE-10278

OPINION AND ORDER

Respondent has appealed from a decisional order issued by Administrative Law Judge Patrick G. Geraghty in the above-captioned matter on December 18, 1989.<sup>1</sup> By that order, the law judge affirmed a 60-day suspension of respondent's airframe rating<sup>2</sup> which had been ordered by the Administrator for alleged

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<sup>1</sup>A copy of the law judge's decisional order is attached.

<sup>2</sup>According to information supplied by the Administrator, respondent holds a mechanic certificate with airframe and powerplant ratings.

violations of sections 43.13(a) and (b) of the Federal Aviation Regulations ("FAR," 14 C.F.R.)<sup>3</sup> in connection with the approval of an aircraft's return to service following the performance of refurbishing work.<sup>4</sup>

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<sup>3</sup>FAR §§ 43.13(a) and (b) provide as follows:

"§ 43.13 Performance rules (general)."

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other techniques, and practices acceptable to the Administrator, except as noted in § 43.16 [which applies to the performance of inspections or other maintenance specified in an Airworthiness Limitations section of a manufacturer's maintenance manual or Instructions for Continued Airworthiness]. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness)."

<sup>4</sup>Previously, on November 20, 1989, the law judge granted a motion by the Administrator, under 49 C.F.R. § 821.31(c), to have the allegations set forth in the amended complaint deemed admitted due to respondent's failure to file an answer. In his order granting that motion, the law judge gave the parties 20 days to file written submissions pertaining to the issue of sanction. No submission was filed by respondent prior to the entry of the decisional order.

The thrust of respondent's appeal is that certain documents were sent to him at an incorrect address,<sup>5</sup> and that, as a result, he received "improper, inadequate and/or untimely notice of various proceedings" prior to the entry of the law judge's decision.<sup>6</sup> Respondent has not, however, demonstrated that he was prejudiced in any fashion, in that he has not shown that the late receipt or nonreceipt of any document compromised his ability to prosecute his defense to the Administrator's allegations.<sup>7</sup> As the Administrator's amended order of suspension was mailed to him at his correct address, respondent's appeal does not adequately explain his failure to file an answer. Additionally, respondent's appeal fails to provide a valid explanation for his failure to furnish a written submission on the issue of sanction pursuant to the law judge's November 20, 1989 order, which was also correctly addressed to him.

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<sup>5</sup>Respondent's correct address includes "Post Office Box 80945." However, some of the documents that were mailed to him in connection with the litigation of this case were addressed to "Post Office Box 80905."

<sup>6</sup>Notice of Appeal 2.

<sup>7</sup>The documents mailed solely to Post Office Box 80905 were a June 19, 1989 letter from the Board's Office of Administrative Law Judges, in which receipt of respondent's notice of appeal from the Administrator's order of suspension was acknowledged; the Administrator's December 11, 1989 request for affirmation of sanction; and the law judge's subsequent decisional order. The law judge's notice of hearing and the Administrator's October 25, 1989 motion to have his allegations deemed admitted appear to have been mailed to both Post Office Boxes. Aside from the Administrator's request for affirmation of sanction, none of the documents mailed to Box 80905 were returned as undeliverable.

In view of the above, the Board believes that there is no sound basis for respondent's appeal and that it must, therefore, be denied.

**ACCORDINGLY IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The law judge's decisional order is affirmed; and
3. The 60-day suspension of the airframe rating of respondent's mechanic certificate shall begin 30 days from the date of service of this order.<sup>8</sup>

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

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<sup>8</sup>For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).